

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
UTICA MUTUAL INSURANCE COMPANY,

Civ. No.

Plaintiff,

-against-

FIREMAN'S FUND INSURANCE COMPANY,

Defendant.

-----X
COMPLAINT

Plaintiff, Utica Mutual Insurance Company ("Utica"), by its attorneys, Mound, Cotton, Wollan & Greengrass, for its Complaint, upon information and belief alleges:

JURISDICTION and VENUE

1. This is an action for breach of contract, and for declaratory judgment brought pursuant to 28 U.S.C. § 2201, for the purpose of determining an actual controversy between the parties as further described herein.
2. This Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 inasmuch as the matter in controversy exceeds \$75,000, exclusive of interest, attorneys' fees, and costs, and plaintiff and defendant are citizens of different States.
3. Venue is properly placed under 28 U.S.C. § 1391, as this is a diversity action, Utica resides in this district, and defendant corporation is registered to do business in this district and is doing business in this district, and a substantial part of the events, giving rise to this Complaint occurred in this district.

THE PARTIES

4. At all times hereinafter mentioned, Utica was and still is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal place of business at 180 Genesee Street, New Hartford, New York where it is engaged in the business of an insurance company.

5. Upon information and belief, defendant, Fireman's Fund Insurance Company ("FFIC"), was and still is a California corporation with its principal place of business at 777 San Marin Drive, Novato, California where it is engaged in the business of an insurance and reinsurance company.

FACTUAL BACKGROUND

6. Utica provided umbrella liability insurance coverage (amongst other coverage) to Goulds Pumps, Incorporated ("Goulds"), a New York corporation pursuant to various policies of insurance including coverage commencing in 1966 and continuing through 1972 (the "underlying policies").

7. The underlying policies were issued by Utica and delivered to Goulds in New York.

8. Utica provided primary insurance coverage to Goulds pursuant to various policies of insurance including coverage commencing in 1966 and continuing through 1972 in the amount of \$100,000/\$300,000 (with a \$300,000 products aggregate), and umbrella coverage in the amount of \$10,000,000 (Ultimate Net Loss contract).

9. Utica sought and obtained reinsurance of the underlying policies through an intermediary, Herbert Clough, Inc. ("Clough"), located at the time at 485 Madison Avenue, New York, New York. The reinsurance contracts were issued and delivered to Utica Mutual in the

state of New York to reinsure the policies Utica Mutual issued to a New York Corporation, Goulds Pumps, Inc.

10. Utica retained 5% of the first \$1,000,000 of the umbrella coverage. Utica Mutual directly placed 95% of the first \$1,000,000 plus 100% of \$4,000,000 xs \$1,000,000 with General Reinsurance Corp., Clough placed the next \$5,000,000 portion of the reinsurance with FFIC.

11. FFIC issued six certificates of reinsurance to Utica delivered through Clough for \$5,000,000 excess of \$5,000,000 ("excess layer") from May 31, 1966 to July 1, 1967, July 1, 1967 to July 1, 1968, July 1, 1968 to July 1, 1969, July 1, 1969 to July 1, 1970, July 1, 1970 to July 1, 1971 and July 1, 1971 to July 1, 1972 respectively (the "Certificates").

12. Goulds filed numerous asbestos related claims, including those involving losses for the above stated period with Utica and Utica adjusted and paid claims and incurred expenses in good faith under the underlying policies that fall within the terms of the certificates ("underlying claims").

13. The underlying claims and the expenses related thereto were adjusted and paid by Utica at their Home Office in New Hartford, N.Y. on behalf of Goulds. The majority of the claims against Goulds and handled by Utica were filed against Goulds in the State of New York.

14. A portion of the total of all Goulds' asbestos claims and associated expenses fall within the excess layer reinsured by FFIC.

15. On or about September 12, 2008 Utica first billed FFIC \$16,794,738.15 for underlying claims and associated expenses that fall within the excess layer.

16. Subsequent billings were issued by Utica to FFIC and, as of May 31, 2009 the billings total \$25,259,405.81 and are continuing.

17. Utica has provided all information requested by FFIC with respect to the underlying claims and the billings, and has made its files located in New Hartford, New York available during an audit conducted there by FFIC during April, 2009.

18. Utica has complied with all of the terms and conditions of the certificates.

19. To date, in breach of its obligations under the certificates, although requested, FFIC has failed to make payment of any portion of the billings.

COUNT I

20. Utica repeats and realleges the allegation contained in paragraph 1 through 17.

21. Pursuant to the Certificates, FFIC is obligated to make payments to Utica in the sum of \$25,259,405.81 as of May 31, 2009 but has failed to make such payment.

22. FFIC breached the certificates by failing to make payment of the billings through May 31, 2009.

23. By reason of FFIC's breach, as of May 31, 2009, Utica has sustained damages in the sum of \$25,259,405.81, and such damages are continuing.

24. By reason of the foregoing, Utica demands judgment against FFIC in the sum of \$25,259,405.81.

COUNT II

25. Utica repeats and realleges the allegations contained in paragraphs 1 through 22.

26. Utica will continue to incur expenses by reason of the underlying claims and associated expenses that are subject to reimbursement by FFIC pursuant to the Certificates.

27. By reason of the foregoing, Utica is entitled to a judgment declaring that FFIC is obligated to make payment to Utica for billings subsequent to May 31, 2009 with respect to

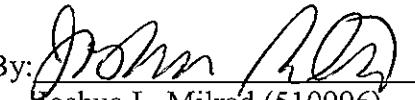
additional claims and associated expenses paid by Utica under the underlying policies that are subject to reimbursement under the certificates.

WHEREFORE, Plaintiff Utica requests that the Court enter judgment as follows:

1. In favor of Plaintiff Utica against Defendant FFIC in the sum of \$25,259,405.81 for amounts billed through May 31, 2009;
2. Declaring that FFIC is obligated to pay future billings by Utica for claims and associated expenses subject to reimbursement under the certificates; and
3. Awarding interest, costs and such other and further relief as the Court deems just and proper.

Dated: New York, New York
July 29, 2009

MOUND COTTON WOLLAN
& GREENGRASS

By: 
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Attorneys for Plaintiff
UTICA MUTUAL INSURANCE
COMPANY
One Battery Park Plaza
New York, New York 10004
(212) 804-4200

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UTICA MUTUAL INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Oneida County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mound Cotton Wollan & Greengrass, One Battery Park Plaza, New York, New York 10004 (212) 804-4200

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	REPORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395f)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 511 Habeas Corpus: Accommodations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	FEDERAL TAX SUITS	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 2201 AND 28 USC 1332
Brief description of cause:
Breach of Reinsurance Contract

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$ 25,259,405.81

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes NoVIII. RELATED CASE(S)
IF ANY

(See instructions):

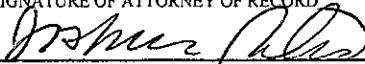
JUDGE _____

DOCKET NUMBER _____

DATE

07/29/2009

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____